IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 250 of 1984

WITH

INCOME TAX REFERENCE No 389 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

JYOTI SWITCHGEARS LTD.

Appearance:

INCOME TAX REFERENCE NO. 250 OF 1984 :

MR BB NAIK FOR MR.MANISH R BHATT for Appellant

MR MR JB SHAH FOR HM TALATI for Respondent No. 1

INCOME TAX REFERENCE NO. 389 OF 1984 :

MR BB NAIK FOR MR.MANISH R BHATT for Appellant

MR MR JB SHAH FOR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE C.K.BUCH
Date of decision: 01/02/2000

COMMON JUDGEMENT (PER : J.N..BHATT, J)

1. Since both these references involve virtually identical questions arising out of almost common facts, upon joint request, we propose to dispose them of simultaneously.

2. In ITR No. 250/84, for the Assessment Year 1979-80, in R.A. No. 240/Ahd/1984 arising out of ITA No. 629/Ahd/1983, the following question is referred to us for our opinion :-

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the payment of royalty of Rs.10,35,185/ was not an expenditure of capital in nature and was an allowable revenue expenditure ?

3. In ITR No. 389/84, for the Assessment Year 1979-80, in R.A. No. 548/Ahd/1984 arising out of ITA No. 1868/Ahd/1983, the following question is referred to us for our opinion :-

(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the payments for royalty of Rs. 7,26,148-00 was an allowable revenue expenditure ?

4. It could very well be seen from the aforesaid questions that except the amount of payment for royalty which was in dispute, formate of questions is also identical.

5. Both the assessees are companies. Royalty was paid in pursuance of an agreement entered with M/s Jyoti Ltd. for supply of technical documentations with respect to the products to be manufactured by the assessee. The technical documentations include designs, drawings, master sheets, tools drawings, erection, maintenance and service manuals etc. Assessee companies in both the cases claimed the payment towards Royalty to M/s Jyoti Ltd. of Baroda as a revenue expenditure, in the return of income for the relevant year 1979-80. Said claim came

to be rejected by the ITO treating it as a capital asset and, therefore, capital expenditure. Upon an appeal, CIT(A) allowed the claim of the assessee companies treating the expenditure as a revenue expenditure which decision came to be confirmed by the Tribunal and appeal of Revenue came to be dismissed.

6. It is, therefore, at the instance of the department, Tribunal has referred each question in each appeal as stated herein above for our opinion.

7. After having heard learned counsel appearing for the Revenue as well as assessees, considering the facts and circumstances and law propounded by this Court in "CIT, Gujarat v/s Jyoti Ltd., 118 ITR 499 ", we are of the clear opinion that each question needs to be answered in the affirmative. Therefore, we answer each question in each Income-tax Reference in the affirmative, against the department and in favour of the assessee.

8. Accordingly, both References shall stand disposed of with no order as to costs. Copy of this judgment be placed in ITR No. 389/84.

*rawal ---------